A **AMZED DEVELOPMENT SDN BHD v. DATO' MAT JAHYA HUSSIN & ANOR**

COURT OF APPEAL, PUTRAJAYA
LAU BEE LAN JCA
ABU BAKAR JAIS JCA
B GUNALAN MUNIANDY JCA
[CIVIL APPEAL NO: R-02(NCVC)(W)-1356-07-2019]
7 DECEMBER 2020

C ***CONTRACT:*** *Agreement – Breach – Damages – Claim for – Parties entered into agreement to jointly develop property – Execution of agreement conditional upon obtainment of approval from authorities – Allegations of delay in completing development project – When project must be completed – Whether there were extensions of time agreed by parties for completion of project – Whether extensions of time signified that parties wanted to carry on with agreement – Whether there* D *was delay in completing project, warranting damages for aggrieved party – Contracts Act 1950, s. 56(1)*

On 23 November 2009, the appellant, a housing developer, signed a joint venture agreement ('agreement') with the respondents, to jointly develop the property belonging to the respondents into a housing project. Disputes later E arose and culminated into an action at the High Court, commenced by respondents, against the appellant. The issues for the High Court's determination were (i) when the project must be completed and whether there were extensions of time agreed by the parties for the completion of the project; and (ii) whether the respondents should be paid compensation F because of the purported delay in completing the project. Allowing the respondents' claim, the High Court Judge ('HCJ') found that (i) the agreement provided for the completion of the project within 24 months of the signing of the agreement after all approvals have been obtained from the authorities in respect of all plans for the project; (ii) the parties varied this G term by signing the agreement first before obtaining the approvals from the authorities; (iii) the 24 months started to run from 23 November 2009, which was the date of the signing and the last date for the completion of the project was 23 November 2011; (iv) the parties agreed to extend the time for completion beyond 23 November 2011 and, in view of this, the respondents were paid RM100,000 by the appellant, which came in two parts of H RM50,000 each, after 23 November 2011. These payments were in consideration of the respondents agreeing to extend time for the completion of the project beyond that date; (v) for the first payment, the parties agreed to extend time until 30 July 2012, and for the second payment, the parties agreed to extend time until 1 February 2016. However, the project was still I incomplete on 1 February 2016; (vi) the appellant and the first respondent then signed a letter ('D9'), indicating that the parties agreed to extend the

time for the completion of the project until 30 June 2017 and for the present suit by the respondents to be withdrawn; (vii) D9 could not be accepted as it restrained the respondents from their right to sue and because the second respondent was unaware of the same and did not give her approval; (viii) the project was finally completed on 28 February 2018, well beyond the first agreed date of completion *ie* 23 November 2009; and (ix) the respondents could claim damages. Hence, the present appeal.

Held (allowing appeal; setting aside decision of High Court)
Per Abu Bakar Jais JCA delivering the judgment of the court:

(1) The agreement underscored the importance of obtaining approval from the authorities before the execution of the agreement. It was axiomatic that the completion of the project must be consistent and ran parallel with the duration of the agreement. It must have been in the contemplation of the parties that the project could not even be started and completed without the approvals of the authorities. (paras 27 & 28)

(2) The extensions of time given showed that the parties must have appreciated the need to obtain the approvals from the authorities. These extensions of time could not override the need for the approvals and could not be definitive in ascertaining the period to complete the project as long as the approvals from the authorities have not been obtained. (para 31)

(3) D9 stated that the project was to be completed on 30 June 2017. This date was only the date estimated for the project to be completed. It was not a definitive date for that purpose. Therefore, the extension of time was set at large as to when the project was to be completed as the approvals from the authorities had not been obtained. Even if the project had to be extended beyond that date, the appellant could not be said to have been in breach of the prescribed period of completion. (para 32)

(4) There could not be a delay in the completion of the project. The last approval obtained from the authorities was on 3 March 2013. Calculating 24 months from this date, the completion date for the project would be 3 March 2015. This date was well before the date of 30 June 2017, as agreed by the parties in D9. (para 35)

(5) The respondents, by their conduct, did not intend for the rescission of the agreement. The repeated extensions of time and D9 were evidence suggesting they wanted to continue with the agreement. In view of this, s. 56(1) of the Contracts Act 1950 ('Act') should be applicable for the appellant. D9 did not deprive the right of the respondents to take legal action against the appellant and was not in contravention of s. 29 of the Act. Section 29 of the Act could only be applied if the respondents had a right under the agreement. The circumstances of the case did not grant

A that right for the respondents in respect of the suit regarding the delay in completing the project. Therefore, it could not be said that s. 29 of the Act should be applied against the appellant. D9 should still be applicable for consideration regarding the extension of time to complete the project. In view of the applicability of D9 and the non-applicability
B of s. 29 of the Act, the intention of the respondents to withdraw the suit should be given effect. They must be bound by what they said. This intention amounted to an estoppel against the respondents from taking legal action. Therefore, this suit could not stand. (paras 36, 38, 39, 41 & 42)

C **(6)** The respondents could not be entitled to any damages as they did not prove that there was a delay in the completion of the project. Furthermore, the extensions of time given by the respondents had allowed more time for the project to be completed. (para 43)

Case(s) referred to:

D *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC **(refd)***

*Goh Chin Chai lwn. Goh Seng Chan [2016] 1 LNS 1660 HC **(refd)***

*Investors Compensation Scheme Ltd v. West Bromwich Building Society [1998] 1 WLR 896 **(refd)***

*Lee Ing Chin & Ors v. Gan Yook Chin & Anor [2003] 2 CLJ 19 CA **(refd)***

E *Sim Chio Huat v. Wong Ted Fui [1983] 1 CLJ 178; [1983] CLJ (Rep) 363 FC **(refd)***

*SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor [2016] 1 CLJ 177 FC **(refd)***

*Tan Siew Hong v. Mohd Azli Abdul Hamid & Ors And Other Cases [2018] 1 LNS 2143 HC **(refd)***

*Teoh Ah Cha & Ors v. Huatson Sdn Bhd & Ors [2018] 1 LNS 1037 HC **(refd)***

F **Legislation referred to:**

Contracts Act 1950, ss. 29, 56(1)

Rules of Court 2012, O. 40A r. 3

For the respondents - Zamri Ibrahim; M/s Zamri Ibrahim & Co

For the appellant - Chan Kean Li, Yap Kok Kheong & Ho Yi Yern; M/s Gibb & Co

G *[Editor's note: For the High Court judgment, please see Mat Jahya Hussin & Anor v. Amzed Development Sdn Bhd [2020] 1 LNS 23 (overruled).]*

Reported by Najib Tamby

JUDGMENT

H **Abu Bakar Jais JCA:**

Introduction

[1] This is an appeal by the appellant against the decision of the High Court in allowing the respondents' claim.

I **[2]** After reading the written submissions filed, hearing both parties orally and perusing the records of appeal, we decided to allow the appeal.

Background Facts

[3] The appellant is a housing developer. The respondents (husband and wife) are the landowners of a piece of land ("the property"). On 23 November 2009, the appellant signed a joint-venture agreement ("the agreement") with the respondents to jointly develop the property into a housing project for the construction of 26 units of semi-detached double storey houses ("the project").

[4] The dispute between the appellant and respondents largely revolves on the issue when the project must be completed and whether there were extensions of time agreed by both parties for the completion of the project. Another issue of substance is whether the respondents should be paid compensation because of the purported delay in completing the project.

High Court's Decision

The learned High Court Judge found as follows:

[5] The relevant term of the agreement provides for the completion of the project within 24 months of the signing of the agreement after all approvals have been obtained from the authorities in respect of all plans for the project.

[6] Both parties agreed to vary this term by signing the agreement first before the approvals from the authorities. Thus, the signing comes first and then the approvals, instead of the converse.

[7] Therefore the 24 months start to run from 23 November 2009, the date of signing and ends on 23 November 2011, the last date for the project to be completed.

[8] Both parties then further agreed to extend the time for completion beyond that date of 23 November 2011. And in view of this, the respondents were paid RM100,000 by the appellant. This payment came in two parts. Each payment was for RM50,000. The first on 18 April 2012 and the second, on 1 February 2016. These payments were after that date, 23 November 2011. These payments were in consideration of the respondents agreeing to extend time for the completion of the project beyond that date.

[9] For the first payment, parties agreed to extend time until 30 July 2012 and for the second payment, parties further agreed to extend time until 1 February 2016. The project was still not completed on that date, 1 February 2016.

[10] The appellant's representative, DW2 and the first respondent signed an undated letter ("D9") that indicates both parties agreed to extend further the time for the completion of the project until 30 June 2017 and for the present suit by the respondents to be withdrawn. However, D9 was issued

without the knowledge and approval of the second respondent. D9 cannot be accepted as it restrained the respondents from their right to sue and because the second respondent was not aware of D9 and did not give her approval.

[11] The project was finally completed on 28 February 2018. This is well beyond the first agreed date of completion ie, 23 November 2009.

[12] The respondents can claim damages as provided by the agreement. The valuation report produced by the respondents through the registered valuer, PW3, proved that they are entitled to RM11,800,000 and RM21,995 for the production of the report as damages.

Summary Of The Appellant's Contentions

[13] The completion date for the project can only be determined after all approvals are obtained from the authorities. Without these approvals, the project could not be completed. The High Court failed to read the whole agreement and to consider business efficacy in reading the entire agreement.

[14] D9 was wrongly considered by the High Court. Evidence by DW1, DW2 and cross-examination on the first respondent were not considered or insufficiently considered as to the effect of D9.

[15] The payments by the appellants to the first respondent referred in D9 were for "wang ihsan" (gratuitous payments) to alleviate the financial difficulties of the latter in view of the delay in completion of the project. And the second respondent knew of D9 and she had knowledge of the payments mentioned in D9. It was wrong for the High Court to find that second respondent did not agree to extend time for completion of the project.

[16] Based on D9, parties agreed to an extension of time for completion on the estimated date of 30 June 2017. The word used in D9 with respect to this date is "menjangkakan" (estimate). It is only estimated that it would be completed on 30 June 2017. Therefore it can go beyond this date.

[17] The respondent waived their right to rescission of the agreement and instead continued with the same in view of D9. The High Court failed to consider this.

[18] The respondents agreed to withdraw this suit and agreed to discuss damages further in the event there is further delay beyond the date 30 June 2017. The respondents, having agreed to withdraw the suit is estopped from continuing with the legal proceeding.

[19] The High Court was wrong to find that the agreement provides for a mechanism in calculating damages. Hence, there is no basis for damages to be awarded by the High Court to the respondents. The High Court wrongly concluded that this was not challenged by the appellant. The appellant also had objected procedurally to the calling of PW3 in giving evidence as an

expert as his intended testimony had not been in the form of a report with an attested affidavit confirming the report for expert evidence. Thus the admission of the valuation report is wrong.

Summary Of The Respondents' Contentions

[20] A term of the agreement stipulates that the completion of the project is 24 months after signing of the same, subsequent to obtaining approvals for the plans by the authorities. Parties agreed to vary this term by signing the agreement first before getting the approvals. The agreement was executed on 23 November 2009. Hence, the completion date for the project should have been on 23 November 2011.

[21] The appellant and respondents agreed for the extensions of time for the completion of the project after this date. RM100,000 was paid by the appellant to the respondents for the delay in completing the project. The respondents terminated the agreement on 29 February 2016 since the project was not completed despite the extensions of time.

[22] The payments made for the extensions of time are for damages for the delay and not advancement as argued by the appellant.

[23] D9 states that the project was extended until 30 June 2017 and for the withdrawal of this suit by the respondents. The second respondent had no knowledge of D9 and did not authorise for first respondent to sign D9. Further, D9 sought to restrain legal proceeding against the appellant and this is a contravention of s. 29 of the Contracts Act 1950.

[24] DW3, the registered valuer rightly gave evidence and prepared the valuation report which was admitted by the High Court. The report was not challenged by the appellant. The report states that the project's market value is RM11,800,000 and therefore the respondents are entitled to RM2,832,000, being 24% of the market value as agreed in the agreement.

Decision

[25] First, the central issue from the facts of the case and submissions of both parties as narrated, is when the project ought to be completed. The starting point in this respect is cl. 3.1 of the agreement that states as follows:

> ADALAH MENJADI SYARAT NYATA Perjanjian ini bahawa Perjanjian ini akan berkuatkuasa selama tempoh Dua Puluh Empat (24) bulan bermula dari tarikh Perjanjian ini ditandatangani dan disetemkan **setelah mendapat semua kelulusan daripada Pihak Berkuasa Berkenaan pelan-pelan berkaitan.** (emphasis added)

[26] Another term of relevance is cl. 5.1(i)(d) of the agreement which states:

A **PEMAJU** hendaklah dengan bersungguh-sungguh membangunkan dan menyiapkan Hak Tuanpunya di dalam tempoh dua puluh empat (24) bulan **dari tarikh kelulusan pelan bangunan.** (emphasis added)

[27] The above terms underscore the importance of obtaining approval from the authorities before the execution of the agreement. Thereafter, for
B the period 24 months to start in calculating the duration of the agreement and thereby also indicating the time to complete the project. It is axiomatic that the completion of the project must be consistent and runs parallel with the duration of the agreement.

[28] It is fair to find that it must have been in the contemplation of the
C parties that the project could not even be started and thereafter completed without the approvals of the authorities. From the standpoint of a reasonable person too, such approvals are the *raison d'etre* as to when the project could be completed. In this regard, it should be common ground that a reasonable man's perspective should be the guide as to how such a term ought to be
D interpreted.

[29] In the Federal Court case of *SPM Membrane Switch Sdn Bhd v. Kerajaan Negeri Selangor* [2016] 1 CLJ 177, the interpretation of a contract was explained by quoting the case of *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 WLR 896 which states as follows:

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(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

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(2) The background was famously referred to by Lord Wilberforce as the 'matrix of fact', but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the
G language of the document would have been understood by a reasonable man.

(3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The
H law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.

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(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax: see *Mannai Investments Co Ltd v. Eagle Star Life Assurance Co Ltd* [1995] 1 WLR 1 508.

(5) The 'rule' that words should be given their 'natural and ordinary meaning' reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera SA v. Salen Rederierna AB* [1985] AC 191, 201:

> If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to conclusion that flouts business common sense, it must be made to yield to business common sense.

[30] Coming back to our case, a reasonable man would have appreciated that no matter exactly at what point in time the agreement was executed, the project could not have been completed without the approvals of the authorities. Having regard to *SPM Membrane* (*supra*) too, business common sense dictates that the project must first be premised on the authorities granting the approvals. In this regard, in giving evidence at the High Court, even the first respondent agreed for the need to get approvals from the authorities before the project can be started. And he agreed that the 24 months should be calculated from the time these approvals could be obtained (pp. 58, 59 and 67 vol. 2 Part B of the Appeal Record).

[31] Further, it must not be forgotten that even the respondents do not dispute that there were extensions of time given to the appellant to complete the project. The extensions of time given show that parties must have appreciated the need to obtain such approvals. These extensions of time, could not in any event override the need for the approvals. Until all approvals are secured, the extensions of time, at best, illustrate the recognition of both parties that the project could not be completed without the approvals. The extensions of time could not be definitive in ascertaining the period to complete the project as long as the approvals from the authorities have not been obtained.

[32] In respect of D9, the evidence is that the first respondent agreed to accept payments totalling RM100,000 to further extend the time for completion of the project. These payments were defined as "wang ihsan" (gratuitous payments). D9 states that the project is estimated to be completed on 30 June 2017 (pp. 158 and 159 vol. 2 Part B of the Appeal Record). We are of the considered opinion that this date is only the date estimated for the project to be completed. It is not a definitive date for that purpose. Thus, the extension of time is set at large as to when the project is to be completed as the approvals from the authorities have not been obtained. Even if the project has to be extended beyond that date, the appellant could not be said to have been in breach of the prescribed period of completion.

[33] Even the first respondent during cross-examination agreed that the date 30 June 2017 as stated in D9 is only an estimate for the project to be completed. And the first respondent too agreed that if there is still a delay beyond that date, parties are at liberty to discuss the matter further (pp. 62 and 63 vol. 2 Part B of the Appeal Record).

[34] With respect to D9, the second respondent gave evidence that the first respondent being her husband, would not do anything without her prior knowledge (p. 87 vol. 2 Part B of the Appeal Record). She also testified that she knew of the payments being made in relation to the extensions of time and she had received the payments made (p. 88 vol. 2 Part B of the Appeal Record). This would indicate she is aware of D9 and therefore could not deny the arrangement made between the appellant and respondents for the extensions of time.

[35] It is in evidence that the last approval obtained from the authorities was on 3 March 2013. Calculating 24 months from this date, the completion date for the project would be 3 March 2015 (p. 158 vol. 2 Part B of the Appeal Record). This date is well before the date 30 June 2017 as agreed by parties in D9. Hence, there could not be a delay in the completion of the project.

[36] It was also shown that the respondents by their conduct did not intend for the rescission of the agreement. The repeated extensions of time and D9 are evidence suggesting they wanted to continue with the agreement. In view of this, s. 56(1) of the Contracts Act 1950 should be applicable for the appellant and this provision states as follows:

> When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promise, if the intention of the parties was that time should be of the essence of the contract.

[37] And the Federal Court case of *Sim Chio Huat v. Wong Ted Fui* [1983] 1 CLJ 178; [1983] CLJ (Rep) 363 on the same point states as follows:

> The position is this: If in a contract in which time is of the essence, a party fails to perform it by the stipulated time, the innocent party has the right either to rescind the contract or to treat is as still subsisting. **If he treats it either expressly or by conduct as still continuing, the contract exists but time ceases to be of the essence and becomes at large.**
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> (emphasis added)

[38] We also do not agree with the contention that D9 deprived the right of the respondents to take legal action against the appellant and hence, contravened s. 29 of the Contracts Act 1950 ("CA"). This provision states as follows:

> **Every agreement , by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract,** by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.
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> (emphasis added)

[39] As clearly seen, the provision above could only be applied if the respondents have a right under the agreement. The circumstances of this case as already highlighted do not grant that right for the respondents in respect of the suit regarding the delay in completing the project. Therefore, it could not be said that the above provision should be applied against the appellant. Hence, D9 should still be applicable for consideration regarding the extension of time to complete the project.

[40] In the event that it could still be argued that this provision should be applicable for the respondents, the understanding achieved with regard to the extensions of time until the last date 30 June 2017 by the parties is independent of D9. This is more so when a contract, ie, the understanding for the extensions could also be established orally and not necessarily in writing ie, D9.

[41] In view of the applicability of D9 as explained and the non-applicability of s. 29 of the CA, the intention of the respondents to withdraw the suit should be given effect. This intention amounts to an estoppel against the respondents. In the case of *Boustead Trading (1985) Sdn Bhd v. ArabMalaysian Merchant Bank Bhd* [1995] 4 CLJ 283; [1995] 3 MLJ 331, the Federal Court dealt with the doctrine of estoppel and said as follows:

> The width of the doctrine has been summed up by Lord Denning in the *Amalgamated Investment case* ([1982] 1 QB 84 at p 122; [1981] 3 All ER 577 at p 584; [1981] 3 WLR 565 at p 575) as follows:

> The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. But it has become overloaded with cases. That is why I have not gone through them all in this judgment. It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence, and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: estoppel is only a rule of evidence, estoppel cannot give rise to a cause of action, estoppel cannot do away with the need for consideration, and so forth. All these can now be seen to merge into one general principle shorn of limitations. *When the parties to a transaction proceed on the basis of an underlying assumption – either of fact or of law – whether due to misrepresentation or mistake makes no difference – on which they have conducted the dealings between them – neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.* (emphasis added)
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> In *Lim Teng Huan v. Ang Swee Chuan* [1992] 1 WLR 113, an appeal from Brunei Darussalam, the Privy Council said that the decision in the *Taylor Fashions* case: … showed that, in order to found a proprietary estoppel, it is not essential that the representor should have been guilty of unconscionable conduct in permitting the representee to assume that he could act as he did: it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which he permitted the representee to make (per Lord Browne-Wilkinson at p 117).

[42] In the present appeal, as the respondents had agreed to withdraw the present suit, they must be bound by what they said. Thus, this suit could not stand as the respondents are estopped from taking legal action.

[43] In respect of damages, first, it has to be pointed out is the fact that the respondents as we have explained, did not prove there was a delay in the completion of the project. Further, the extensions of time given by the respondents had allowed more time for the project to be completed. Therefore, the respondents could not be entitled to any damages.

[44] Further, the understanding to withdraw and not to maintain the present suit, would also mean damages must not be awarded to the respondents.

[45] Besides, in trying to prove damages, the respondent called PW3, the registered valuer. Without PW3, damages would not be proven. PW3 acted as an expert witness as he is in the specialised field regarding the valuation of properties. He must be treated as an expert witness. Therefore, he must be subjected to the rule regarding such witness. There is no dispute that before PW3 testified at the High Court, O. 40A r. 3 of the Rules of Court 2012 was not complied with by the respondents in calling PW3 as a witness. This provision states as follows:

3. Requirements of expert's evidence (O. 40A r. 3)

(1) Unless the Court otherwise directs, **expert evidence to be given at the trial of any action, is to be given in a written report signed by the expert and exhibited in an affidavit sworn to or affirmed by him** testifying that the report exhibited is his and that he accepts full responsibility for the report.

(2) An expert's report shall:

(a) give details of the expert's qualifications;

(b) give details of any literature or other material which the expert witness has relied on in making the report;

(c) contain a statement setting out the issues which he has been asked to consider and the basis upon which the evidence was given;

(d) if applicable, state the name and qualifications of the person who carried out any test or experiment which the expert has used for the report and whether or not such test or experiment has been carried out under the expert's supervision;

(e) where there is a range of opinion on the matters dealt with in the report:

(i) summarise the range of opinion; and

(ii) give reasons for his opinion;

(f) contain a summary of the conclusions reached;

(g) contain a statement of belief of correctness of the expert's opinion; and

(h) contain a statement that the expert understands that in giving his report, his overriding duty is to the Court and that he complies with that duty. (emphasis added)

[46] There is no dispute that PW3 did not affirm an affidavit as required by the above provision. Besides, the report must contain the particulars as listed in the same. As this was not complied with, PW3's testimony should not have been accepted by the High Court. Obviously, the provision was enacted for it to be followed. It was not enacted for the same to be ignored or to be taken lightly (see the cases of *Goh Chin Chai lwn. Goh Seng Chan* [2016] 1 LNS 1660, *Teoh Ah Cha & Ors v. Huatson Sdn Bhd & Ors* [2018] 1 LNS 1037 and *Tan Siew Hong v. Mohd Azli Abdul Hamid & Ors And Other Cases* [2018] 1 LNS 2143).

[47] We are well aware that we should not normally disturb the findings of fact made by the lower court. However, in the Court of Appeal case of *Lee Ing Chin & Ors v. Gan Yook Chin & Anor* [2003] 2 CLJ 19 it is said as follows:

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> Suffice to say that we re-affirm the proposition that an appellate court will not, generally speaking, intervene unless the trial court is shown to be plainly wrong in arriving at its decision. **But appellate interference will take place in cases where there has been no or insufficient judicial appreciation of the evidence.** (emphasis added)

B **[48]** We have explained our reasons as to why we differed in our findings compared to those made by the High Court. With respect, there is a need for appellate intervention in this appeal before us.

Conclusion

C **[49]** Based on all the reasons aforesaid, we are unanimous that this appeal should be allowed. We set aside the decision of the High Court with costs in favour of the appellant.

[50] Order accordingly.

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